## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

KALEIDA HEALTH

Employer

and

Case 03-RC-077821

CONCERNED CARPENTERS FOR A DEMOCRATRIC UNION

Petitioner

and

BUFFALO BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

Intervenor

and

NORTHEAST REGIONAL COUNCIL OF CARPENTERS

Intervenor

ORDER

The Petitioner's Request for Review of the Regional Director's Decision and

Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE, CHAIRMAN

BRIAN E. HAYES, MEMBER

RICHARD F. GRIFFIN, JR., MEMBER

Dated, Washington, D.C., December 14, 2012

<sup>1</sup> The Regional Director reasoned, in part, from the premises that (1) the employees in the petitioned-for unit are "unrepresented" and (2) the Employer is not acting as a construction industry employer within the meaning of Sec. 8(f) with respect to the renovation work performed by unit employees. We disavow both of these premises. The employees are represented by the Buffalo Building & Construction Trades Council and the Northeast Regional Council of Carpenters pursuant to pre-hire agreements with the Employer covering these employees. Therefore, we do not rely on the Regional Director's application of Sec. 103.30(c) of the Board's Rules and Regulations relating to acute healthcare facilities, under which she determined that the petitioned-for unit qualifies as a residual unit of previously unrepresented employees or, alternatively, as a preexisting, nonconforming unit. Instead, we apply the principle that the appropriate unit, when a representation petition concerns the employees of a single employer covered by a prior 8(f) agreement, is "normally" the single employer's employees covered by the agreement. John Deklewa & Sons, 282 NLRB 1375, 1377 (1987), enfd. sub nom. Iron Workers, Local 3 v. NLRB, 843 F.2d 770 (3d Cir. 1988). In doing so here, we also rely on the parties' stable, 6-year bargaining history under their pre-hire agreements. See Grace Industries, LLC, 358 NLRB No. 62, slip op. at 9-10 (2012) (8(f) bargaining history, while not controlling, is a relevant consideration in determining the appropriate unit); P.J. Dick Contracting, 290 NLRB 150, 151 (1988) (Board relied on the parties' 8(f) bargaining history in determining the appropriate unit).

We agree that the Regional Director properly rejected the Petitioner's argument that the craft-severance criteria set out in the Board's decision in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), favor a finding that the petitioned-for unit of carpenters is an appropriate collective-bargaining unit in this instance. But in doing so, we do not rely on the Regional Director's subsidiary finding that the carpenters' work for the Employer was sufficiently integrated with that of the other construction crafts so as to weigh against a separate unit. See *Burns & Roe Services Corp.*, 313 NLRB 1307, 1309 (1994). Instead, we would rely on the Regional Director's consideration of other *Mallinckrodt* factors, which weighed in favor of a broader construction crafts unit.

Member Hayes regards the application of Sec. 103.30(a) and (c) of the Board's Rules as dispositive of the appropriate bargaining unit issue presented here with respect to an acute healthcare facility's employees who have not previously been represented by a labor organization under Sec 9(a). Accordingly, he finds no need to reach the Regional Director's craft-severance analysis.